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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 ZANE M. FLOYD,

Case No. 3:21-cv-00176-RFB-CLB

12 Plaintiff,

13 v.

14 CHARLES DANIELS, DIRECTOR, NEVADA
DEPARTMENT OF CORRECTIONS, ET AL.,

15 Defendants.
**DECLARATION OF LINDA FOX,
PHARMACY DIRECTOR OF THE
NEVADA DEPARTMENT OF
CORRECTIONS PURSUANT TO MINUTE
ORDER DATED JUNE 30, 2021
(ECF No. 115)**

16
17 I, Linda Fox, hereby declare based on personal knowledge and/or information and belief, that the
following assertions are true.

- 18 1. I have been a registered pharmacist with the State of Nevada since 1990.
2. I have worked as a pharmacist for the Nevada Department of Corrections (NDOC) since
2004.
3. I currently am the Pharmacy Director for the NDOC, a position I have held since 2010.

24 This position is also occasionally referred to Chief of Pharmacy or Pharmacy Director. I am responsible
25 for the administrative and day-to-day functions of pharmaceutical services for the NDOC. This position
26 requires me to do many things, including ensuring that medications are ordered, obtained, and properly
27 stored and secured until they are utilized for their intended use.

1 4. I am providing this Declaration to the Court at the request of my counsel, as it is my
2 understanding the Court has sought the following information pertaining to each of the drugs referenced
3 in the Execution Manual:

- 4 a. “when the drug or drug batch was purchased,”
5 b. “[w]hen the drug or drug batch was received by the NDOC, and”
6 c. “the expiration date for the respective drug or drug batch expired.”

7 5. In response to these three specific questions, there is some important information I need
8 to share with the Court as to the processes and storage information to put the information into context.

9 6. First, for purpose the Court’s question in ¶ 4(a), I am providing the information for the
10 date of ordering the drugs, which to me as a layperson I consider purchasing, and based on the context
11 of the Court’s question, appears to be what the Court is requesting information on. I would have to defer
12 to my counsel as to whether there is a distinction between ordering and purchasing.

13 7. Second, with regard to the Court’s question in ¶ 4(b), I note that the general and standard
14 practice is that NDOC receives a drug the next business day following the drug being ordered/purchased
15 on the Cardinal website portal. This is generally noted by the “stamped received” marking on the invoice
16 and also generally aligns with the date listed on the invoice immediately following the “Cust. No.” box
17 on the right-hand side of the invoice. The invoices also note the “order date” in the box entitled the same.
18 As an example, I direct the Court to one of the invoices that will be referenced below and contained in
19 **“Attachment 2”** to this Declaration, NDOC0001.

20 8. Third, with regard to the Court’s question in ¶ 4(c), once the drugs are received, they are
21 stored in the same location in the pharmacy, and it is not possible at that point to determine which “batch”
22 the drug was part of, due the manner in which the medications are stored. I can certainly provide the
23 expiration dates for each of the drugs as requested. I simply cannot provide to this Court what specific
24 order unless the drug is the only supply of the drug in NDOC’s possession, or the only supply of that
25 drug from a particular manufacturer. This is because if the drug is from the same manufacturer, once
26 ordered, received, and purchased, the drugs are stored in the same location without any readily available
27 markings or posting suggesting which “batch” the drug was part of at the time of ordering.

1 9. With those three important caveats, I believe I can provide this Court with the information
2 it seeks for “all drugs (including different batches of the same drug) listed in the Execution Protocol” as
3 referenced in the Order and referenced in ¶¶ 4(a)-(c) above.

4 10. To that end, I direct the Court to the Chart incorporated into this declaration as
5 “**Attachment 1**,” which provides five categories: (1) drug name and quantity; (2) invoice bates number;
6 (3) order/purchase date; (4) receive date; and (5) expiration date. The invoices referenced in category two
7 of the chart are located in “**Attachment 2**.” The “drug name” referenced in the chart is the generic name
8 for the drug, e.g. fentanyl, alfentanil, ketamine, cisatracuriam, potassium chloride or potassium acetate,
9 and not the specific brand name, which can be found on the invoices. The use of the word “I” in any
10 footnotes in the Chart at Attachment 1 should be read as referring to me, Linda Fox. The Chart has been
11 organized alphabetically and in order the drugs are injected pursuant to the Execution Protocol. They
12 have also been organized in reverse chronological order from the date of order/purchase.

13 11. I do not believe there is any other “underlying documentation” pertinent to the Court’s
14 question, but in an abundance of caution I have also provided the “perpetual inventory logs,” which I
15 understand have previously been disseminated in response to a public records request. Those logs are
16 located at “**Attachment 3**.” NDOC Pharmacy maintains perpetual logs for controlled substances and
17 therefore no such logs exist for any purchases of cisatracuriam, potassium chloride, or potassium acetate
18 as those are not controlled substances. I have not yet completed the perpetual log for the alfentanil
19 purchase of June 1, 2021 contained in the Chart. Therefore, there is no log to provide to the Court
20 regarding that purchase. However, the information contained in the Chart pertaining to the June 1, 2021
21 purchase is accurate and correct. These logs are being provided to the Court as further support for the
22 quantities, whereabouts, and expiration dates associated with the drugs set forth herein. Please note the
23 logs also contain other drugs not listed in the Chart as the drugs were purchased prior to 2018. To ensure
24 there is no confusion however, the Chart accurately reflects the current stock of drugs referenced in the
25 Execution Manual.

12. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

EXECUTED this 30th day of June, 2021.

/s/ Linda Fox*
Chief Linda Fox
Pharmacy Director,
Nevada Department of Corrections

* Pursuant to Temporary General Order 2020-05, entered by Chief Judge Du on March 30, 2020, <https://www.nvd.uscourts.gov/wp-content/uploads/2020/03/GO-2020-05-re-COVID-19-Remote-Hearings.pdf>, and as extended on March 29, 2021, <https://www.nvd.uscourts.gov/wp-content/uploads/2021/03/Order-Extending-GO-2020-05.pdf>, Chief Fox has authorized counsel to affix her electronic signature to this Declaration. Should counsel have misconstrued these Temporary Orders in any way, or if the Court wishes to have a hand-signed copy of this Declaration, one will be provided to the Court upon request.